Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

BONNE L. PACE,

Petitioner,

v.

THE HONORABLE PENDLETON GAINES,
JUDGE, SUPERIOR COURT OF ARIZONA,
COUNTY OF MARICOPA, ET AL.

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF ARIZONA**

PETITION FOR WRIT OF CERTIORARI

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Petitioner, In Properia Persona

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
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QUESTION PRESENTED

Whether Arizona Revised Statute Section 20-614(A),[1] which permits a court to, "**without notice** issue an injunction restraining . . . and **all other persons,**" is unconstitutional and violative of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution as applied to Petitioner Bonne L. Pace as to an order issued under this statute, *in absentia,* and enforced, *post hoc,* six (6) years later against Petitioner Bonne L. Pace who was not a party nor in privy with a party to the action in which the order was issued?

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[1] A.R.S. 20-614 (A) is part of the Uniform Insurers Liquidation Act ("UILA") promulgated by the National Association of Insurance Commissioners and adopted by all 50 states. Thus, the Questioned Presented is applicable to State Courts in all 50 states.

LIST OF ALL PARTIES TO PROCEEDINGS BELOW

The only party named in the Special Action appears in the caption. However, the Court of Appeals allowed the following persons to appear as an interested persons:

> CHARLES R. COHEN, Commissioner of Insurance and Receiver of American Bonding Company, and MICHAEL J. FITZGIBBONS, Special Deputy Receiver of American Bonding Company.

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Petitioner Bonne L. Pace, *pro se,* ("Bonne Pace") respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Arizona in this case, affirming a decision by the Court of Appeals, Division One, State of Arizona.

OPINIONS BELOW

The judgment of the Supreme Court of Arizona denying a petition for review of the decision of the Court of Appeals for the State of Arizona, Division One, is included as App., *infra,* 1. The opinion of the Court of Appeals for the State of Arizona is unreported and is included as App., *infra,* 2. The judgment of the Superior Court, Maricopa County, State of Arizona, finding Petitioner Bonne L. Pace in contempt of a 1995 order entered in a case in which she was never involved , is unreported and is included as App., *infra,* 3.

The judgment that the Maricopa County, Arizona Superior Court order of which Petitioner was erroneously found in contempt was entered in February 1995, in an action entitled *State of Arizona, ex.rel. v. American Bonding Company,* Case Number CV95-01684 and is included as App., *infra,* 4. The predicate for the February 1995 order of the Maricopa County Superior Court was an order issued by the Arizona Department of Insurance dated August 25, 1994, which is included as App. *Infra,* 5.

JURISDICTION

This Petition is timely filed within 90 days of the Supreme Court of Arizona's denial of Petitioner Bonne L. Pace's ("Bonne Pace") Petition for Review. The jurisdiction

of this Court is invoked under 28 U.S.C. 1257 in that the judgments below are repugnant to the U.S. Constitution.

STATUTORY PROVISIONS INVOLVED

Arizona Revised Statutes Section 20-614(A), adopted by all 50 States as the Uniform Insurers Liquidation Act ("UILA"), authorizes a Superior Court to:

> "**without notice** issue an injunction restraining the insurer, its officers . . . and **all other persons** from . . . the waste or disposition of its property. . . ." (Emphasis added) [2]

Although not statutory, this Petition also involves the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, which prohibits any state from depriving a person of its property without due process of law.

STATEMENT OF THE CASE

A. INTRODUCTION.

This case comes about as a result of the Arizona and California Insurance Departments' ("DOI") complete disregard for the decision of this Court in *Securities and Exchange Commission v. National Securities, Inc.*, 393 U.S. 453 (1969). There, the AZDOI sought to assert authority

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[2] Almost 70 years ago, in *Chase National Bank v. City of Norwalk*, 431 U. S. 426 (1934), this Court found identical language to be unconstitutionally overly broad. One has to question why the National Association of Insurance Commissioners would cause the UILA to include such patently unconstitutional language in this nationally adopted statute.

over shareholder relations under its statutory regulations of insurance companies in disregard for the Supremacy Clause and the Securities and Exchange Act.

Disregarding this Court's command in *National Securities*, in 1994, the AZDOI unlawfully interfered with an SEC approved shareholder written consent process under Delaware law, and claimed the right to interfere with the shareholders' election of a new board of directors. See App. 5, *infra,* page 1, lines 16-21, page 2, lines 5-25. In June and July 1994, the CA DOI and AZDOI fatuously claimed that the SEC approved Written Consent Solicitation process under which existing shareholders simply voted their shares for or against the removal of the board of directors, was in fact "an offer to enter into an agreement to acquire control of" American Bonding Company ("ABC")." See App. 5, *infra,* p. 2, lines 5-14, p. 1, lines 16-21; App. 6.

Obviously, the 1994 Consent Solicitation process sanctioned by the SEC did not involve any solicitation for the purchase of shares of Pace American Group, Inc. ("Pace American")[3] and the "control" of not one single share of Pace American took place as a result of the Written Consent Process. Rather, all that the shareholders of Pace American did in June 1994 was to vote their shares in writing either for or against the proposed resolution. AZDOI's claim that the written consent process involved the acquiring of "control" was spurious and pretextual.

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[3] Bonne Pace's husband, Don H. Pace, founded Pace American and is its largest shareholders. App. 5, *infra*. The written consent process was to remove the board of directors that had taken over Pace American and terminated his contract in March 1994. *Id.*, p. 1. lines 22-26; App. 6.

Arizona did not approve of the shareholder elected new directors and as a result of the Supervision Order dated August 25, 1994, the AZDOI assumed control of a financially healthy, profitable insurance company with annual revenues in excess of $37 Million and capital and surplus in excess of $12.5 million. By January 1995, the AZDOI installed supervisor, had terminated all business, reducing ABC's income to zero, and manipulated its capital account, artificially transferring $10 million of its $12.5 million in capital to loss reserves. Thus, having created the illusion of financial problems, on February 2, 1995, the AZDOI filed an order in the Maricopa County, Arizona Superior Court, forcing ABC into "receivership." ("1995 Order"). App. 4 *infra.*

The only party defendant to this action was ABC. App. 4, *infra,* p. 1, lines 13-14. This order granted a variety of injunctive relief, and pursuant to Arizona Revised Statutes Section 20-614(A), ordered that:

> "B. IT IS FURTHER ORDERED THAT except by leave of this Court . . ., the Defendant [ABC] . . . **and other persons** . . ., be and they hereby are enjoined from:
>
> 1. Commencing, prosecuting, continuing or enforcing any claim, suit or proceeding against ABC. . . ." (Emphasis added). App. 4, *Infra,* p 4, lines 18-26, p. 5, lines 1-6.

B. PROCEEDINGS BELOW WHICH RESULTED IN THE UNCONSTIUTIONAL APPLICATION OF THE 1995 ORDER TO BONNE PACE IN MARCH 2002 BY THE MARICOPA COUNTY, ARIZONA SUPERIOR COURT.

ABC has remained in "receivership" since 1995. In 2001, the receiver filed suit in Maricopa County, Arizona Superior Court against a number of persons on claims that had long before been litigated by other parties and resolved against the receiver's theories. Among the persons named as defendants in the suit were Bonne Pace and her husband Don H. Pace ("D. Pace").[4] App. 3, *infra,* pp.2-3.

The case was removed to the United States District Court, Arizona, and thereafter, Bonne Pace and her husband filed their answer and on behalf of Pace American shareholders, also asserted shareholder derivative counterclaims against the receiver and his sycophant attorneys under RICO. App. 3, pp. 2-3.

Three months after the filing of the shareholder derivative RICO counterclaims against the receiver and his attorneys for multiple instances of fraud, on October 26, 2001 the receiver filed, and on November 13, 2001, served a Show Cause Order on Bonne Pace at her Florida home, commanding that she show why she should not be held in contempt of the 1995 Order by virtue of her filing of the

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[4] Bonne Pace and her husband were and for a substantial number of years, had been residents of the State of Florida. App. 3, *infra,* pp.3-4.

shareholder derivative counterclaim in Federal Court. App. 3, *infra,* pps. 1, 2, and 5, lines13-20.

Although Bonne Pace did not agree with the show cause order,[5] she nevertheless, filed a motion in Federal Court to file an amended answer dropping the shareholder derivative RICO counterclaim on November 18, 2001. *Id.*

Despite having ceased the allegedly offending act of filing a RICO derivative counterclaim, the receiver continued to pursue the show cause order (App. 3, *infra,* p. 5, lines13-20) and on March 1, 2002, *in absentia,* the Maricopa County, Arizona Superior Court entered a judgment holding Bonne L. Pace in contempt of the 1995 Order. App. 3, *infra.* The sole basis for the Superior Court's finding that Bonne Pace was in contempt of the 1995 Order was that:

> "**After** the filing of the unauthorized counterclaims . . ., Bonne L. Pace was given **actual notice** of the injunctive provisions of the Receivership Order [1995 Order] . . ." App. 3, *infra,* p. 3, lines 11-12. (Emphasis added).

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[5] In addition to the fact that Bonne Pace had never been a party or in privy with a party to the 1995 Order, the 1995 Order only prohibited suits against "ABC or against any of its assets. . ." App. 4, *infra.* p. 5, lines 3-5. Nothing in the 1995 Order restrained suits personally against the receiver and the receiver's attorneys for their independent fraudulent conduct, a distinction ignored by the receiver in the show cause order, and by the Maricopa County, Arizona Superior Court in its March 1, 2002 judgment of contempt. App. 3, *infra,* pp. 2-3.

In a further abortive attempt to support the finding of contempt, the Superior Court added that:

> "The injunctive provisions of the Receivership Order [1995 Order] are binding upon . . . Bonne L. Pace, even though these individuals **were not originally parties** to the American Bonding Company receivership case, because the authority of the Court under A.R.S. 20-614 . . . operates *in rem* against any individual . . . ." App. 3, *infra,* p. 3, lines 15-23. (Emphasis added).

While the 1995 Order had *in rem* aspects, the prohibition against suits operated only *in personam. See, United States v. Dean Rubber Mfg. Co.,* 71 F. Supp. 96, 97-98 (W.D. Mo. 1946).

A judgment of contempt is not an appellable order in Arizona so Bonne L. Pace filed a Special Action in the Court of Appeals, State of Arizona, Division One, seeking a review of the judgment of contempt. On April 11, 2002, the Court of Appeals affirmed the March 1, 2002 judgment of contempt. App. 2, *Infra*

The Court of Appeals did not embrace the Superior Court's fatuous holding that the court had *in rem* jurisdiction. Rather, the Court of Appeals relied solely upon the finding that Bonne Pace:

> "was given actual notice of the injunctive provisions of the Receivership Order [1995 Order] . . ." App. 2, *infra,* pp. 1-2.

Based only upon "actual notice" of the 1995 Order received over 6 years after it was entered, the Court of Appeals relied upon Arizona Revised Statutes Section 20-614(A) for authority that a "Receivership Court" had the authority to bind non-parties and persons not in privy with parties, under the statutory language which provides that a court:

> ". . .may *without notice* issue an injunction restraining the insurer, . . . and all other persons from the transaction of its business or the waste or disposition of its property[6]. . ." *Id.*

Bonne Pace sought review of the Court of Appeals decision by the Arizona Supreme Court. On August 13, 2002, the Arizona Supreme Court denied Bonne Pace's Petition for Review.

REASONS FOR GRANTING THE PETITION

Due process concerns are implicit in the idea that every party is entitled to her "own day in court" before any order can be enforced against her. *See, e.g., Meza v. General Battery Corp.*, 908 F.2d 1262, 1265 (5th Cir. 1990). This constitutional concept has been imbedded by this Court in Federal Rules of Civil Procedure, Rule 65 (d), which

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[6] Clearly the filing of a RICO counterclaim individually against the receiver and his attorneys is neither the "transaction of" ABC's business nor is it "the waste or disposition of" ABC's "property." As with the Superior Court, the Court of Appeals never addressed how Section 20-614(A) could be applied to the counterclaim against the receiver and his attorneys and how it had any relevancy to the counterclaim issue.

expressly limits the application of an injunctive order "only" to parties and their privies. While Arizona has a comparable rule of civil procedure, by this case, Section 20-614 (A) has been held to operate independent of Arizona's Rule 65 and thus, Arizona Courts are permitted to ignore the constitutional limitations of Rule 65.

Section 20-614(A) is part of the UILA, and the decision in this case will cause a proliferation of unconstitutional applications of orders issued by courts against non-parties in virtually all states.[7] The guidance from this Court is acute.

This case is a timely and rare opportunity to provide guidance to all state courts as to the limits of restraining orders and their UILA version of Section 20-614(A). Moreover, the decisions below totally disregard over 70 years of precedent of this Court and the issue that it addresses is important in that courts must be reminded that no statute can operate unconstitutionally against non-parties.

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[7] Because of the incestuous relationship between state departments of insurance through the National Association of Insurance Commissioners, who meet quarterly, the Court of Appeals decision in this case has undoubtedly been disseminated to all other 49 state departments of insurance.

I. The Decision of the Court of Appeals Interpreting Arizona Revised Statutes Section 20-614 (A) Conflicts With This Court's Decision in *Chase National Bank v. City of Norwalk,* 431 U. S. 426 (1934) And Other Decisions of This Court and Was Erroneous.

The Court of Appeals based its decision solely upon the fact that 6 years after the 1995 Order was entered, Bonne Pace received "notice." As long as 70 years ago, this Court established that notice of an order was constitutionally insufficient to comply with due process requirements.

In *Chase National Bank v. City of Norwalk,* 431 U. S. 426 (1934), this Court flatly rejected the holding by the Court of Appeals in this case, that "notice" of an order is sufficient to bind a non-party. In *Chase National,* the Plaintiff obtained an injunction forbidding the removal of piles, wires and other electrical equipment against the defendant, "its officers, agents and employees," and "**all persons whomsoever to whom notice of this order shall come.**" (Emphasis added). *Id.,* at 436-37.

In reaching its decision that the injunction in question could not be enforced against non-parties, this Court relied upon and affirmed Judge Learned Hand's decision in *Alemete Manufacturing Corp. v. Staff,* 42 F.2d 832 (2d Cir. 1930) *Id.,* at 437. This Court made it clear that "notice" of an order is insufficient to bind non-parties, saying:

> "But extending the injunction to 'all persons to whom notice of the injunction shall come,' the District Court assumed to make punishable as contempt the conduct of persons who act

> independently and **whose rights have not been adjudged according to law.** . . .To subject them to such perils violates established principles of equity jurisdiction and procedure. . . . Those principles require that the clause be **limited to confederates or associates of the defendant**." *Id.*, at 437. (Emphasis added).

Bonne Pace's rights were never adjudicated prior to the entry of the 1995 Order and she had not had "her own day in court." *See, e.g., Meza v. General Battery Corp.*, 908 F.2d 162, 1265 (5th Cir. 1990). Nor was Bonne Pace a "confederate or associate" of the defendant, ABC, in the 1995 Suit.

This Court's decision in *Chase National* requires reversal of the Court of Appeal's decision in this case.

This Court's decision in *Chase National* embraced the rationale of Judge Learned Hand in *Alemete Manufacturing Corp. v. Staff*, 42 F.2d 832 (2d Cir. 1930). In *Alemete Manufacturing Corp*, the District Court had issued a restraining order against the defendant, and his agents. Subsequently, a third party, not a party to the original suit and acting on his own initiative, began conduct that violated the restraining order.

In the opinion by Judge Hand, the Second Circuit Court of Appeals reversed an order of contempt, stating that "it is not the act described which the decree may forbid, but only that act **when the defendant does it**." *Id.*, at 833 (Emphasis added).

Judge Hand made it clear that orders such as the 1995 Order and the overly broad language of Section 20-614(A), are a nullity as to non-parties, saying:

> "On the other hand no court can make a decree which will **bind any one but a party**; a court of equity is as much so limited as a court of law; it cannot lawfully **enjoin the world at large,** no matter how broadly it words its decree. If it assumes to do so, the decree is pro tanto brutum fulmen, and the persons enjoined are free to ignore it.
>
> It [the Court below] is not vested with sovereign powers to declare conduct unlawful; its jurisdiction is limited to those over whom it gets personal service, and who therefore can have their day in court.
>
> * * *
>
> The District Court had no more power in the case at bar to punish the respondent than a third party who never heard of the suit." *Id.*, at 833. (Emphasis added).

Judge Hand's holding is equally applicable to Section 20-614(A) in that it purports to grant authority to Arizona Superior Courts acting in receivership matters, the authority to "enjoin the world at large." The constitutional limit of the Arizona legislature, and the NAIC, is authority over parties and their privies. There is no authority to adopt a statute that permits a court to adjudicate a parties rights *in absentia*, and hold such non-parties in contempt when they never had their "own day in court" prior to the entry of the order.

Arizona courts and other NAIC state courts, can only " make a decree which will **bind any one but a party**;. . . it cannot lawfully **enjoin the world at large, . . .**" *Alemete Manufacturing Corp. v. Staff,* 42 F.2d 832 , 833 (2d Cir. 1930) (Emphasis added).

The decisions in this case ignore the commands of this Court and under Arizona Revised Statutes Section 20-612(A), these courts have sought to "enjoin the world at large." As a result, in 1995, the Arizona Courts purported to have adjudicated Bonne Pace's rights *in absentia,* and enforced a judgment against her in denial of her due process rights under the Fourteenth Amendment to the U.S. Constitution.

This Court has never deviated from the principles announced by Judge Hand and this Court in *Chase National Bank v. City of Norwalk,* 431 U. S. 426 (1934). For example, that courts can only bind persons who are parties and who thus had their own day in court, was re-affirmed in *Zenith Corp. v. Hazeltine,* 395 U. S. 100, 110 (1969), where this Court said:

> "It is elementary that one is not bound by a judgment *in personam* resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process. . . . The **consistent constitutional rule** has been that a court has no power to adjudicate a personal claim or **obligation** unless it has jurisdiction over the person of the defendant." (Emphasis added).

Moreover, this principle has been universally followed by other state courts, except for the decision of the Arizona Court of Appeals, which invoked Section 2-614(A).

> "It is so fundamental to our concept of justice that a citation of supporting authorities is unnecessary to hold that the rights of an individual cannot be adjudicated in a judicial proceeding to which he has not been made a party and from which he has literally been excluded by the failure of the moving party to bring him properly into court. Under our system a man's rights cannot be disposed of or otherwise determined by a judicial decree, entered in absentia." *Alger v. Peters,* 88 So.2d 903, 906 (Fla. Sup. Ct. *En Banc,* 1956).

II. The Question Presented Is Important.

UILA was adopted after this Court last addressed the issue raised in this case in *Zenith Corp. v. Hazeltine,* 395 U. S. 100, 110 (1969). Indeed, no case has been found during the past 30 years in which this Court provided guidance to both the courts, legislatures and the NAIC, as to the constitutional limits of their authority to bind persons who did not have their "own day in court" before the order was issued.

The authorities cited in Section I of this petition were cited by Bonne Pace to the Superior Court, the Court of Appeals and the Arizona Supreme Court. The Court of Appeals never once referred to these decisions, relying solely upon Section 20-614(A). App. 2, *Infra.* The Court of Appeals undoubtedly believed that the Arizona legislature could enact a statute that departs from this Court's clear constitutional holdings.

The AZDOI undoubtedly views the Court of Appeals decision as a major victory, authorizing it to trample upon the

rights of non-parties at will. Moreover, as shown by the AZDOI's total disregard for this Court's decision in *Securities and Exchange Commission v. National Securities, Inc.*, 393 U.S. 453 (1969), (See App. 6), the AZDOI does not deem itself constrained by decisions of this Court.

The Court of Appeals decision in this case is undoubtedly well known to the DOI's in all 50 states. It is a given that those other states will seek to use the pernicious and insidious tool that the Court of Appeals' decision in this case represents and will infringe the rights of other non-parties in their receivership actions.

Before Arizona and other states leap to unconstitutional conclusions and apply the Court of Appeals' decision to other innocent persons, guidance from this Court is imperative to prevent further blatant disregard for the due process rights of all citizens.

CONCLUSION

The promulgation of the UILA containing the language adopted by Arizona in Section 20-614(A), shows either a lack of awareness of the decisions in this Court or a total disregard for the decisions of this Court as to the constitutional limits of injunctions. The Court of Appeals decision totally ignored this Court's decision, undoubtedly believing that Section 20-614(A) overruled this Court's holdings as cited above.

Every citizen in every state is now faced with the potential of being denied their constitutional rights to their "own day in court" before an order can be enforced against them.

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Petitioner In Propria Persona

APPENDIX A

SUPREME COURT
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Noel K. Dessaint, Clerk of Court
Kathleen E. Kempley, Chief Deputy Clerk

Arizona Supreme Court No. CV-02-0167-PR
Court of Appeals Division One No. 1 CA-SA 02-0065
Maricopa County Superior Court No. CV 95-001684

[Filed August 13, 2002]

BONNE L. PACE	)
	)
v.	)
	)
HON PENDLETON GAINES et al	)
	)

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on August 12, 2002, in regard to the above referenced cause:

ORDERED: Request for Consolidation of Consideration of Appeal and Petitions for Review = DENIED.

FURTHER ORDERED: Appellants' Request for Consolidation of consideration of Appeal and Petitions for Review = DENIED.

FURTHER ORDERED: Petition for Review = DENIED.

FURTHER ORDERED: Request for Attorneys' Fees [Real Party American Bonding Company Receiver] = DENIED.

A panel composed of Vice Chief Justice McGregor, Justice Feldman and Justice Berch participated in the determination of this matter.

Record returned to the Court of Appeals, Division One, Phoenix, this 13th day of August, 2002.

Noel K Dessaint, Clerk

TO:
Bonne L Pace
Joyce N Van Cott, Glove, & Van Cott PA
F Pendleton Gaines III, Judge, Maricopa County Superior Court
Glen D Clark, Clerk, Court of Appeals, Division One, Phoenix
West Publishing Company
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APPENDIX B

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

1 CA-SA 02-0065
DEPARTMENT E
MARICOPA County Superior Court No. CV-95-001684

[Filed April 11, 2002]

BONNE L. PACE,
Petitioner,

v.

THE HONORABLE PENDLETON GAINES, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA,
Respondent Judge,

CHARLES R. COHEN, Receiver of American Bonding Company, and MICHAEL J. FITZGIBBONS, Special Deputy Receiver of American Bonding Company,
Real Parties in Interest.

DECISION ORDER

This special action came on regularly for conference this 10th day Of April, 2002, before Presiding Judge E. G. Noyes Jr., and Judges Michael D. Ryan and Cecil B. Patterson, Jr. The matter was taken under advisement. After consideration, the court accepts jurisdiction because contempt orders are generally not appealable, and review by special action is appropriate. *Elia v. Pifer,* 194 Ariz. 74, 80, ¶ 30, 977 P.2d 796, 802 (App. 1998).

The court denies relief. Petitioner argues that she could not be held in contempt of "an order issued in a case by another judge more than six (6) years ago." In rejecting that argument, the Receivership Court found that "[a]fter the filing of the unauthorized counterclaims and third party claims, [Petitioner] was given actual notice of the injunctive provisions of the Receivership Order, yet she refused to cease prosecution of the claims against American Bonding Company, the Receiver, and the receivership personnel and receivership attorneys after being requested to do so." The record supports those findings.

Petitioner argues that the injunction was issued pursuant to Arizona Rule of Civil Procedure ("Rule") 65(h). This is incorrect. The injunction was issued pursuant to Arizona Revised Statutes ("A.R.S.") sections 20-612 to -615 (2002). Under the Uniform Insurers Liquidation Act ("UILA"), a court in which a delinquency proceeding is instituted is authorized to enjoin all claims against the insurer so long as the court retains jurisdiction. *Integrity Ins. Co. v. Martin,* 769 P.2d 69, 70 (Nev. 1989); *Am. Star Ins. Co. v. Grice*, 865 P.2d 507, 511-12 (Wash. 1994). Under Arizona's version of the UILA, *see* A.R.S. §§ 20-611 to -651, the Receivership Court is vested with exclusive, original

jurisdiction over American Bonding Company, its assets, and its affairs. *See* A.R.S. § 20-612(A). The Receivership Court

> may *without notice* issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers and agents and all <u>other</u> persons from the transaction of its business or the waste or disposition of its property ....

A.R.S. § 20-614 (A) (emphasis added). The Receivership court may also issue injunctions to prevent (1) interference with the receiver or the proceeding; (2) waste of the insurer's assets; (3) commencement or prosecution of any actions; (4) obtaining of preferences, judgments, attachments, or other liens; and (5) any levy against the insurer or against its assets or any part of its assets. A.R.S. § 20-614(B) .

The court had authority to issue the Receivership Order; Petitioner's claims violated that Order; and Petitioner received actual notice of the Order and her violation when she received the demand letter, a copy of the injunction, and the order to show cause in early November 2001.

Petitioner also argues that the court lacked *in personam* jurisdiction over her. An Arizona court has personal jurisdiction over a non-resident to the maximum extent permitted under the United States Constitution. Rule 4. 2(a); *see also Houghton v. Piper Aircraft Corp.*, 112 Ariz. 365, 367, 542, P.2d 24, 26 (1975). "[T]wo factors govern the scope of due process for in personam jurisdiction: (1) the defendant' s 'minimum contacts' with the forum state and (2) the reasonableness of exercising jurisdiction over the foreign

defendant." *A. Uberti & C. v. Leonardo,* 181 Ariz. 565, 569, 892 P.2d 1354, 1358 (1995). Both tests are met in the present case, for reasons adequately stated by the Receivership Court in its March 1, 2002 judgment:

> This Court has personal jurisdiction over Don H. Pace and Bonne L. Pace to enforce the injunctive provisions of the Receivership Order because, in addition to their contacts with the State of Arizona that Support the exercise of either general or specific personal jurisdiction over them, the violations of the Receivership Order were caused to occur by Respondents in the State of Arizona and were specifically designed by Respondents to injure American Bonding Company its Receiver, and the receivership staff and attorneys all of whom are residents of the State of Arizona, and all of whom are protected under the injunctive provisions of the Receivership Order issued by this Arizona Court.

We find that the Receivership Court properly exercised personal jurisdiction over Petitioner.

Petitioner also argues that service of process was improper. She begins by noting that Rule 4.2(c) provides that out-of-state "service may be made by depositing the summons and a copy of the pleading being served in the post office, postage prepaid, to be sent to the person to be served." She then argues that Rule 7(a) provides that the only pleadings allowed are those specified in the Rule, that an order to show

cause is not so specified, and, therefore, that service under Rule 4.2(c) was not permitted because an order to show cause is not a qualified pleading. We conclude that the Rules can be fairly interpreted to allow petitions and orders to show cause to be served pursuant to Rule 4.2(c).

Rule 3 states that "[a] civil action is commenced by filing a complaint." A complaint shall contain (1) the title of the cause, (2) a plain and concise statement of the facts, and (3) a demand for relief. Black's Law Dictionary 356 (4th ed. rev. (1968)); *see also* Rule 8(a) (2) (stating that a pleading setting forth a claim for relief shall contain (1) a jurisdictional statement if necessary, (2) "[a] short and plain statement of the claim showing that the pleader is entitled to relief," and (3) a demand for relief. The Receiver's petition for an order to show cause includes a statement that the petition is based on the court's file, and the petition includes proper titling, a statement of the facts showing that the Receiver is entitled to relief, and a request for an order to show cause why the Receiver is not entitled to the specific relief requested. The petition for an order to show cause is thus analogous to a complaint and the order to show cause is analogous to a summons. *Cf.* Ariz Local R. Prac. Super. Ct. (Maricopa) 2.11 (stating that an order to show cause requires that "the petition or complaint requesting such relief" be properly filed before it may be signed) . We therefore conclude that service of the petition and order to show cause was valid. Accordingly,

IT IS ORDERED that the court accepts jurisdiction of the petition for special action.

IT IS FURTHER ORDERED that relief is denied.

IT IS FURTHER ORDERED that the Receiver's request for an award of attorneys' fees and costs pursuant to A.R.S. § 12-2106 (1994), Rule 25 of the Arizona Rules of Civil Appellate Procedure, and Rule 4(g) of the Arizona Rules of Procedure for Special Actions is denied.

DATED this 11th day of April, 2002.

/s/ _____
E.G. NOYES, JR., Presiding Judge

APPENDIX C

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

No. CV 95-01684
Petition No. 294

[Filed March 1, 2002]

In the Matter of: the Rehabilitation of: AMERICAN BONDING COMPANY, an Arizona corporation.

CHARLES R. COHEN, Receiver of American Bonding Company, and MICHAEL J. FITZGIBBONS, Special Deputy Receiver of American Bonding Company,
Petitioners,

v.

DON H. PACE and BONNE L. PACE, husband and wife,
Respondents.

JUDGMENT OF CONTEMPT OF COURT AGAINST DON H. PACE AND DONNE L. PACE, AND AWARD OF DAMAGES AND SANCTIONS

(Assigned to the Honorable Pendleton Gaines)

The Court, having considered Petition 294 for Order to Show Cause re Contempt filed by Petitioners and the Order to Show Cause issued by this Court on October 26, 2001, and notice and an opportunity to be heard having been given to Respondents by personal service of the Order to Show Cause, but Respondents having failed to appear or seek a continuance of the hearing of the merits of this matter, and the Court having received and considered the documents submitted by the parties, which are contained in the record, including the requests of Petitioners and Respondents for Judicial Notice, and having considered the documentary evidence and testimony offered by the Petitioners at the Order to Show Cause hearing on March 1, 2002,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

I. Requests for Judicial Notice and Findings of Fact and Conclusions of Law

1. Petitioners' Request for Judicial Notice was submitted in compliance with Rule 201 of the Arizona Rules of Evidence and is granted.

2. Respondents' separate Requests for Judicial Notice are granted only to the extent that the Court has taken judicial notice of the documents referenced therein.

3. Petitioners' request under Rule 52 for findings of fact and conclusions of law is granted and entered separately.

4. In entering this Judgment, the Court adopts and incorporates the Findings of Fact and Conclusions of Law entered by this Court on November 24, 1999, as well as the Findings of Fact and Conclusions of Law entered in relation to Petition 294 concurrently with this Judgment.

II. Don H. Pace's and Bonne L. Pace's Violations of the Receivership Order

5. On or about August 18, 2001, and then on or about September 14, 2001, Don H. Pace and Bonne L. Pace violated the Order for Appointment of Receiver and Injunction, which was entered by this Court on February 2, 1995 ("Receivership Order"), by the filing and/or prosecution of unauthorized counterclaims and third party claims seeking a judgment for $75 million against American Bonding Company, Charles R. Cohen, Sara M Begley, Michael J. FitzGibbons and his prior, current, and successor employers, Joseph M. Hennelly, Jr., and his prior, current, and successor employers, Nicholas C. Guttilla and Guttilla & Murphy, P.C., Joyce N. Van Cott and Glover & Van Cott, P.A., and their agents, associates, or representatives, as well as others who have served, are serving, and will serve the receivership estate in Federal District Court under Case No. CIV-01-1551 PHX SRB. (Recently, the Federal District Court remanded this case to the Maricopa County Superior Court, where it is now pending under Case No. CV2001-010265.)

6. Don H. Pace had actual notice of the injunctive provisions of the Receivership Order prior to the filing of the unauthorized counterclaims and third party claims, yet he did not seek relief from the injunctive provisions of that Order prior to filing and prosecuting the claims against American Bonding Company, the Receiver, and the receivership personnel and receivership attorneys.

7. After the filing of the unauthorized counterclaims and third party claims, Bonne L. Pace was given actual notice of the injunctive provisions of the Receivership Order, yet she refused to cease prosecution of the claims against American Bonding Company, the Receiver, and the receivership personnel and receivership attorneys after being requested to do so.

8. The injunctive provisions of the Receivership Order are binding upon Don H. Pace and Bonne L. Pace, even though these individuals were not originally parties to the American Bonding Company receivership case, because the authority of the Court under A.R.S. § 20-614 (much like the authority of the United States Bankruptcy Court under 15 U.S.C. § 362(a)) operates *in rein* against any individual or entity who undertakes to interfere with the property and administration of the insurance receivership estate, which is under the control of the Receivership Court and which under Title 20 of the Arizona Revised Statutes is to be administered for the benefit of the estate's creditors.

9. This Court has personal jurisdiction over Don H. Pace and Bonne L. Pace to enforce the injunctive provisions of the Receivership Order because, in addition to their contacts with the State of Arizona that support the

exercise of either general or specific personal jurisdiction over them, the violations of the Receivership Order were caused to occur by Respondents in the State of Arizona and were specifically designed by Respondents to injure American Bonding Company, its Receiver, and the receivership staff and attorneys, all of whom are residents of the State of Arizona, and all of whom are protected under the injunctive provisions of the Receivership Order issued by this Arizona Court.

10. The actions and omissions of Don H. Pace and Bonne L. Pace described above were intentional and were designed to interfere with receivership of American Bonding Company. Therefore, the actions and omissions of Respondents constitute contempt of this Court's Receivership Order.

III. Don H. Pace's Violations of the Sanctions Order

11. Don H. Pace violated the Order Granting Receiver's Application for Attorneys' Fees and Motion for Imposition of Sanctions Against Don H. Pace entered by this Court on November 24, 1999 ("Sanctions Order"), and affirmed, by the Arizona Court of Appeal on August 22, 2000, by his improper *ex parte* communication with the Receivership Court accomplished by letter on October 12, 2001, and documented in a Minute Entry filed in this case on October 17, 2001.

12. After this matter (Petition 294) was filed by the Receiver, Don H. Pace further violated the Sanctions Order by his failure to abide by the proof of service requirements imposed upon him in paragraph 5 of that Order.

13. The Sanctions Order is binding upon Don H. Pace because it was entered as a result of Don H. Pace's unsuccessful efforts in 1998 and 1999 to formally intervene in the American Bonding Company receivership case to obtain the appointment of a special master, and as a result of his actions with respect to the Receiver and the Receivership Court thereafter.

14. This Court has personal jurisdiction over Don H. Pace to enforce the Sanctions Order because, in addition to his contacts with the State of Arizona that support the exercise of either general or specific personal jurisdiction over him, the violations of the Sanctions Order were caused to occur by Respondent in the State of Arizona and were specifically designed by Respondent to injure American Bonding Company and its Receiver.

15. Don H. Pace had actual notice of the provisions of the Sanctions Order, yet he did not abide by them.

16. The actions and omissions of Don H. Pace described above were intentional and were designed to interfere with receivership of American Bonding Company. Therefore, the actions and omissions of Don H. Pace constitute contempt of this Court's Sanctions Order.

IV. Frivolous Motion to Quash Purported Service of Order to Show Cause

17. On or about November 19, 2001, Don H. Pace and Bonne L. Pace filed separate Motions to Quash Purported Service of Order to Show Cause. Petitioners responded to the Motions and requested an award of fees and costs as sanctions

for the filing of frivolous motions.

18. On January 23, 2002, this Court denied Respondents' Motions to Quash and reserved Petitioners' request for sanctions until the hearing of the Order to Show Cause re Contempt.

19. The Court now finds that the Motions to Quash were frivolous and were filed in violation of Rule 11 of the Arizona Rules of Civil Procedure.

V. Judgment of Civil Contempt

20. As a result of the violations of the Receivership Order and the Sanctions Order, and as a result of the filing of the frivolous Motions to Quash, the American Bonding Company Receiver has been injured by having to pay for the services of the Special Deputy Receiver and receivership counsel to defend against the unauthorized claims brought by the Paces' and to prosecute this Petition 294 for Order to Show Cause re Contempt.

21. A judgment of civil contempt is hereby entered against Don H. Pace and Bonne L. Pace and they shall pay $56,815.00, jointly, and severally, to the American Bonding Company Receiver, the Special Deputy Receiver's fees and attorneys' fees incurred by the Receiver in relation to Petition 293, Petition 294, and the Receiver's defense of the unauthorized counterclaims and third party claims previously pending in Federal District Court and now pending in the Superior Court.

22. The assessment of Special Deputy Receiver's fees and attorneys' fees includes the amounts incurred in relation to the frivolous Motions to Quash.

23. Don H. Pace and Bonne L. Pace shall immediately dismiss without prejudice all counterclaims and all third party claims asserted in Maricopa County Superior Court Case No. CV2001-010265 against American Bonding Company, Charles R. Cohen, Sara M. Begley, Michael J. FitzGibbons and his prior, current, and successor employers, Joseph M. Hennelly, Jr., and his prior, current, and successor employers, Nicholas C. Guttilla and Guttilla & Murphy, P.C., Joyce N. Van Cott and Glover & Van Cott P.A., and their agents, associates, or representatives, as well as others who have served, are serving, and will serve the receivership estate.

24. If Don H. Pace and Bonne L. Pace do not dismiss the pending claims identified above within fifteen days of the entry of this Judgment, the American Bonding Company Receiver may apply to this Court or the court before whom the counterclaims and third party claims are pending for an order of dismissal without prejudice.

25. If Don H. Pace and/or Bonne L. Pace have filed or file in the future any unauthorized claims against American Bonding Company, its Receiver, and any receivership personnel or attorneys, the Receivermay apply to the court in which such claims are pending for an order of dismissal without prejudice.

26. There is no just reason for delay and this Judgment of Contempt is a final judgment under Rule 54(b).

ENTERED THIS 1 day of March, 2002.

/s/ _____
PENDLETON GAINES
MARICOPA COUNTY SUPERIOR COURT

ORIGINAL lodged and a copy hand-delivered
this 28th day of February, 2002 to:

Honorable Pendleton Gaines
Maricopa County Superior Court
201 W. Jefferson, ECB 814
Phoenix, Arizona 85003-2329

COPY of the foregoing sent by UPS overnight delivery this
28th day of February, 2002, to:

Mr. Don Pace
Ms. Bonne L. Pace
305 Pelican Circle
Panama City Beach, Florida 32413
UPS Routing Number:
IZ F9E 000 22 1000 188 7

/s/ _____

APPENDIX D

**IN THE SUPERIOR COURT OF
THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

No. CV95-01684

[Filed February 2, 1995]

STATE OF ARIZONA, ex rel. CHRIS HERSTAM, Director of Insurance, Plaintiff,	)
vs.	)
AMERICAN BONDING COMPANY, an Arizona corporation, Defendant.	)

**ORDER FOR APPOINTMENT OF
RECEIVER AND INJUNCTION**

Plaintiff, State of Arizona, ex rel. Chris Herstam, Director of Insurance, having filed a Verified Complaint for Appointment of Receiver and for Injunction pursuant to A.R.S. §§ 20-612, 20-613, 20-614, and 20-615; the Defendant, American Bonding Company ("ABC") through its attorney, Philip R. Higdon, having been served with process

and accepted same; having been fully advised of its right to a hearing in this matter and having waived notice of same; and having advised that it waives its right to a hearing on whether a receiver should be appointed; the Court makes the following Findings of Fact and Conclusions of Law and enters the following Orders: ...

[P. 4]...appraisers and other persons to evaluate the property subject to this Receivership and to operate the business of Defendant, as the Receiver may deem necessary in the Performance of his duties and responsibilities in discharging the authority conferred by this Order;

4. Make such payments and disbursements from the property subject to this Receivership and to incur such expenses as may be necessary and advisable in discharging his duties as Receiver and to present to this Court from time to time an accountingof all such payments, disbursements and expenses;

5. Institute, prosecute, defend, compromise, intervene in, seek stays in, or become a party to, such suits, actions or proceedings at law or in equity as may, in the Receiver's opinion, be necessary for the collection, recovery, protection, maintenance, or preservation of the property subject to this Receivership.

B. IT IS FURTHER ORDERED THAT except by leave of this Court, during the pendency of the Receivership order herein, the Defendant and all customers, principals, investors, creditors, stockholders, lessors, and other persons except for the Receiver, seeking, to establish or enforce any claim, right or interest against or on behalf of ABC, and all

others acting for or on behalf of such persons including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies and their [P. 5] respective attorneys, servants, agents, employees, be and hereby are enjoined from.

1. Commencing, prosecuting, continuing or enforcing any claim, suit or proceeding against ABC or against any of its assets for a period of one-hundred twenty days (120) from the entry of this Order, unless such time period is modified by the Court with notice to the Receiver. Further, this order does not enjoin the filing of administrative claims with the receiver pursuant to A.R.S. § 20-626 *et seq.* if implemented, or Paragraph (B) (2) of this Order.

2. Notwithstanding any other provision of this Order, claims against ABC shall be filed only as provided below:

a. A person with a claim against ABC shall file his claim with the Receiver as provided in this Order by delivering or mailing the claim to:

Michael J. FitzGibbons
Special Deputy Receiver
American Bonding Company
6245 E. Broadway Blvd., Ste. 600
Tucson, Arizona 85711

b. The claim shall set forth in reasonable detail the amount of the claim (or the basis upon which such amount can be ascertained) and the facts upon which the claim is based. The claim shall also be verified by the affidavit of the

claimant or someone authorized to act on his behalf and having knowledge of the facts, and shall be...

[P. 12] ... 5. Obstructing or interfering or refusing to cooperate with the Receiver appointed pursuant to this or his duly authorized agents, in the exercise of the lawful authority under the Orders of this Court.

DONE IN OPEN COURT this 2 day of Feb. 1995

/s/ _____
Judge of the Superior Court

APPENDIX E

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

Docket No. 8528

[Filed August 25, 1994]

In the Matter of:	)
	)
AMERICAN BONDING	)
COMPANY,	)
Respondent.	)
	)

NOTICE OF DETERMINATION AND ORDER FOR SUPERVISION, AND NOTICE OF HEARING

Based upon information provided by the Corporate and Financial Affairs Division to the Director of Insurance, and based upon the Quarterly Statement as of June 30, 1994 of American Bonding Company (American Bonding), it appears to the Director that Respondent's condition is such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, and Respondent has failed to comply with the law, as follows:

1. Respondent, American Bonding is an Arizona domestic insurer and a wholly owned subsidiary of Pace American Group, Inc. (Pace American), a publicly held

Delaware corporation. Pace American is in control of American Bonding within the meaning of the Arizona Holding Company Act, A.R.S. § 20-481, *et seq.* (the Act).

2. Don H. Pace (Mr. Pace) is or was the President, Chief Executive Officer of Pace American and a member of the board of directors of Pace American. Mr. Pace is or was the Vice-President and a member of the board of directors of American Bonding.

3. On or about February 1, 1994, the board of directors of Pace American placed Mr. Pace, among others, on leave of [P. 2] absence pending investigation of serious allegations of improper conduct and self-dealing.

4. On or about March 9, 1994, Mr. Pace was terminated by the Pace American board of directors.

5. On or about May 20, 1994, a group referring to itself as the Concerned Stockholders Committee of Pace American Group, Inc. (Committee) issued a Solicitation of Consents to Remove and Replace Directors of Pace American Group, Inc. (Consent Solicitation).

6. The Committee's Consent Solicitation constituted an offer to enter into an agreement to acquire control of a domestic insurer within the meaning of the Act. However, the Committee failed to obtain the approval of the Director prior to the issuance of the Consent Solicitation, in violation of the Act.

7. On or about July 7, 1994, the Committee and Pace American, among other parties, entered into a Memorandum of Understanding, and subsequently on July 15, 1994 entered into a Settlement Agreement, terminating certain litigation regarding the Consent Solicitation and resulting in the resignation of the board of directors of Pace American and the election of a new slate of directors to effectuate a prescribed business policy agenda in accordance with the Consent Solicitation. However, the Committee still had not obtained the approval of the Director as required by the Act.

8. On or about July 13, 1994, the Arizona Department of Insurance (Department) advised the Committee that in the interest of the stability of American Bonding the Department ...

[P. 13]...accurately reflected in the appropriate annual financial statements, and provide appropriate amended annual financial statements.

3. Pursuant to A.R.S. § 20-170, the Director appoints FitzGibbons, Tharp & Associates, Inc. as Supervisor.

4. Pursuant to A.R.S. § 20-170, the Director herewith orders that Respondent, during the period of supervision, may not do any of the following things without the approval of the Director or his Supervisor.

(a) Dispose of, convey or encumber any of its assets or its business in force;

(b) Withdraw any of its bank accounts;

(c) Lend any of its funds;

(d) Invest any of its funds;

(e) Transfer any of its property;

(f) Incur any debts, obligations or liabilities whether insurance related or otherwise;

(g) Merge or consolidate with another company; or

(h) Enter into any new reinsurance contract or treat.

5. If Respondent fails to satisfy the requirements to abate this Order within sixty (60) days from the date of this Order, the Director may take appropriate action including but not limited to commencing a conservatorship pursuant to A.R.S. § 20-171 after the hearing provided for below.

6. This matter will be heard on the 25th day of October, 1994, at 9:00 a.m. at the Arizona Department of Insurance 2910 North 44th Street, Suite 210, Phoenix, Arizona 85018 to consider whether Respondent has complied with the [P. 14] Director's requirements. If the Respondent has not complied, the Director will appoint a conservator who shall immediately take charge of Respondent and all of its property, books, records and effects. The conservator shall conduct the business of Respondent and take such steps

toward the removal of the cost and conditions which have necessitated this Order, as the Director may determine.

7. Pursuant to A.R.S. § 20-171(C), the costs incident to the services of the Director, or his Supervisor, or both, including the cost of preparing a transcript of proceedings in any hearing requested by Respondent, shall be charged against the assets and funds of Respondent and shall be paid when fixed and determined by the Director.

8. A.R.S. § 20-164, entitles any person affected by the hearing referenced in paragraph 6 of this Order, to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence, to examine witnesses, to present evidence in support of his or her interest and to have subpoenas issued by the Director of Insurance to compel attendance of witnesses and production of evidence in his or her behalf.

9. The Director herewith delegates all of his authority, powers, duties and functions, whether ministerial or discretionary, with which he is vested as Director of Insurance of the State of Arizona, whether implied or express, to Harold Merkow for the purpose of acting as hearing officer in this matter. This delegation of authority shall continue until specifically revoked.

[P. 15] 10. Notwithstanding any provision of this Order, nothing herein does or should be interpreted to preclude the Department from taking any regulatory action at anytime, including but not limited to initiation of delinquency

proceedings at any time, even if prior to the hearing set herein.

11. Because good cause exists therefor, this Notice and Order shall become effective immediately.

DATED this 25th day of August, 1994.

/s/ _____
Chris Herstam
Director of Insurance

COPY of the foregoing mailed/delivered this 25th day of August, 1994, to:
W. Mark Sendrow
Assistant Attorney General
Attorney General' s Office
1275 West Washington
Phoenix, Arizona 85007

Chris Herstam, Director
Gay Ann Williams, Deputy Director
Charles R. Cohen, Executive Assistant Director
Dale Hazlett, Special Assistant
Greg Harris, Administrative Law Judge
Gary Torticill, Assistant Director
Deanna Delmar, Deputy Receiver
Kelly McKay, Assistant Chief Examiner
Barbara Lewis, Assistant Chief Examiner
Laurie Gannon, Assistant Examiner
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

Emil B. Askew
American Bonding Company
Suite 600
6245 East Broadway Boulevard
Tucson, Arizona 85711

Pace American Group, Inc.
Suite 500
6245 East Broadway Boulevard
Tucson, Arizona 85711

APPENDIX F

STATE OF ARIZONA
DEPARTMENT OF INSURANCE
2910 North 44th Street, Suite 210 Phoenix, Arizona 85018

Fife Symington, Governor
Chris Herstam, Director of Insurance

July 28, 1994

VIA FACSIMILE 282-91-38

Concerned Stockholders Committee
c/o Mauricio Madero, Jr.
Grupo Pragma, S.A. DE C.V.
Andres Bello No. l0 Piso 10
Col. Polanco Chapultepec
C.P. 11560
Mexico, D.F.

VIA FACSIMILE (602) 748-3256

Mr. Emil B. Askew
President
American Bonding Company
Suite 600
6245 East Broadway Boulevard
Tucson, Arizona 85711

Re: AMERICAN BONDING COMPANY; PACE AMERICAN GROUP, INC.; CONCERNED STOCKHOLDERS COMMITTEE

Gentlemen:

Thank you for your letters dated July 20 and 21, 1994 responding to my letter dated July 13, 1994. I and other involved representatives of this Department have carefully reviewed and discussed your letters, and have noted the additions and modifications to the terms of my letter. It is the intention of this correspondence to finally state the terms of the course of action this Department will undertake with respect to the matters giving rise to our previous correspondence, and to describe the mutually acceptable arrangements between the Arizona Department Of Insurance (Department), American Bonding Company (Bonding), Pace American Group, Inc. (Pace), and the Concerned Stockholders Committee (the Committee) to exist for the duration of such course of action, as described below.

1. Notwithstanding that the Department could assert the provisions of the Holding Company Act to deem the Committee's consent solicitation and the vote intended to be effected thereby as ineffective, see A.R.S. § 20-481.02(D), the Department will conditionally recognize the validity of the solicitation, the Settlement Agreement arising therefrom and the replacement of Pace's board of directors with the new slate.

2. The Committee will proceed-to comply with the Form A requirements of the Holding Company Act. The Committee will complete its Form A filing in accordance with subsequent correspondence from the Department as to the completeness of the filing. The proceedings will advance in

accordance with A.R.S. § 20-481, *et. seq.*

The Department intends for its review of the Form A to consist of a complete review of Pace management and the qualifications of the its directors and officers. The Department's diligence will include its independent examination of the activities of Don Pace as a director and officer of Pace, and an assessment of his suitability for future involvement in and control over the affairs of Pace and thereby Bonding.

On Friday, July 22, 1994, this Department received a payment from Bonding in the amount of $25,000, ostensibly as the deposit referred to in my July 13, 1994 letter. I have already conveyed to Steven Miller for the Committee that payment from Bonding is not acceptable as the deposit required from the Committee as a downpayment toward the expenses of the Department's diligence with respect to the Committee's Form A filing. The Department had indicated to Mr. Miller that we are willing to apportion the deposit described in my July 13, 1994 letter between Bonding and the Committee to reflect that certain of the expenses to be defrayed thereby relate directly to Bonding. The Department believes it is appropriate to allocate one half the deposit, $12,500, to expenses relating to Bonding. Therefore, the Department requires a deposit in the amount of $12,500 from the Committee with respect to its Form A filing, to be remitted by or before August 2, 1994. The balance of the payment received from Bonding will be applied to its outstanding debt to the Department for financial and market conduct examination expenses.

3. Pace will undertake a full and independent investigation of the activities of Don Pace as a director and officer of Pace, and will share the results thereof with this

Department. Neither Pace nor any member of the holding company system shall engage in any transaction, agreement or other deal-....

DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, CA 94105

John Garamendi, Insurance Commissioner

June 2, 1994

Concerned Stockholders Committee
(Pace American Group, Inc.)
c/o D.F. King & Company, Inc.
77 Water Street, 20th Floor
New York, NY 10005

ATTENTION: Concerned Stockholders Committee of Pace American Group, Inc.

SUBJECT: Solicitation of Pace American Group, Inc.'s Shareholder Consents--Violation of California Insurance Code Section 1215.2

California Insurance Code Section 1215.2 prohibits any person from entering into an agreement to acquire control either directly or indirectly of a California domestic insurer or commercially domiciled insurer (see Section 1215.13) without first, among other things, filing an application with, and obtaining prior approval, from the California Insurance Department. As you are aware, American Sentinel Insurance Company is a California domestic insurance company and American Bonding Company is an Arizona domestic insurance company which is commercially domiciled in Pace American Group, Inc. for which you are soliciting shareholder consents in order to remove and replace the entire Board of Directors of Pace American Group, Inc.

A copy of the Consent Statement of Concerned Stockholders Committee dated May 20, 1994 has recently been provided to this Department. Statements in that document make it clear that members of the Concerned Stockholders Committee have entered into an agreement in order to take control of Pace American Group, Inc. by way of soliciting shareholder consents in accordance with Delaware General Corporation law. The Solicitation states that it is the Committees intent to remove the entire Board of Directors, to reduce the number of directors constituting the Board, and to elect their own slate of directors to fill the vacancies. Also covered in the Solicitation are both general and specific business policies and transactions that have been discussed by the Concerned Stockholders Committee and will be undertaken immediately upon taking office. The Concerned Stockholders Committee has already undertaken and entered into transactions that required heretofore filings with the... [P. 3] and policies of Pace American Group, Inc. and its subsidiaries. In addition, you should note that the purpose and intent of the required prior approval filings of Section 1215.2 is to provide regulatory review of the proposed plans and proposals of the persons and entities that are seeking to take control of an insurer. That review includes a determination as to whether those proposals will leave the insurer in a position to satisfy the requirements to continue its license to do business.

As above stated, compliance and filings in accordance with Section 1215.2 are required immediately.

Very truly yours,

/s/ _____

Lorraine Johnson
Senior Staff Counsel
(415) 904-5681

LJ: ams

cc: Janice Kerr, General Counsel
Norris Clark, Chief, Financial Surveillance
Ramon Calderon, Chief, Field Examinations